

COMMENTS ON THE PROPOSED REOPENER OF THE COUNTY OF LOS ANGELES MUNICIPAL STORMWATER DISCHARGE PERMIT
 SECOND COMMENT PERIOD (July 21 – September 4, 2006)
 (NPDES NO. CAS004001)

Table 1.A. Response to Comments on Approach to Include Dry Weather SMB Beaches Bacteria TMDL WLAs in the MS4 permit (for comments received at the July 21 workshop)

COMMENT NO.	SUMMARY OF COMMENT	COMMENTER(S)	RESPONSE	REVISION	LOCATION IN DOCUMENTS
1.A.1	<u>Storm Water Quality Management Program</u> Do not amend receiving water limitations to include the dry weather SMB Bacteria WLA. Utilize the iterative approach by requiring revisions to the Storm Water Quality Management Program	Azusa; Carson; Claremont; Executive Advisory Committee; Glendora; Inglewood; TECS Environmental (consultant for some municipalities); Whittier	Part 2 contains the Receiving Water Limitations, which is how the waste load allocations in the TMDL were expressed. So it is appropriate that they be placed there. Changes to the SQMP are geared toward managing the quality of <u>storm water</u> discharges through an iterative process. In contrast, non-storm water flows are to be prohibited under federal storm water regulations.	No	
1.A.2	<u>Await Permit Renewal</u> Utilize the normal MS4 permit renewal process to consider inclusion of SMB Bacteria WLAs	Malibu; Burhenn & Gest LLP (attorneys for LA County); County of Los Angeles; Redondo Beach	The reopener provisions in Pt 6 I. identify the authority and procedures for the Board to modify the permit prior to expiration. The proposed consideration by the Board to incorporate the Santa Monica Bay (SMB) Bacteria TMDL summer dry weather Waste Load Allocations (WLAs) complies with these provisions. The TMDL requires compliance with the summer dry weather waste load allocations by July 15, 2006.	No	
1.A.3	<u>Memoranda of Understanding</u> Consider the use of Memoranda of Understanding (MOUs)	Burhenn & Gest LLP (attorneys for LA County); Richard, Watson & Gershon (attorneys for Agoura Hills; Artesia;	40 CFR 122.44(d) requires that NPDES permits must be consistent with the assumptions and requirements of any available waste load allocation. Failing to	No	

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	between the Water Board and municipal Permittees to implement WLAs	Beverly Hills; Hidden Hills; La Mirada; Norwalk; Rancho Palos Verdes; San Fernando; San Marino; South El Monte and West Lake Village)	incorporate the WLAs into the permit in favor of an MOU would be contrary to the federal regulations.		
1.A.4	<u>Prohibition</u> Support amendment to permit Discharge Prohibitions and Receiving Water Limitations provisions, to prohibit the discharge of non storm water containing bacteria to Santa Monica Bay.	Heal the Bay; Natural Resources Defense Counsel (NRDC); Santa Monica Bay Keeper	The Water Board staff considered several options to render the SMB Beaches Bacteria TMDL summer dry weather WLAs enforceable, and determined that the limited reopener of the LA County MS4 permit was the best option to enforce the WLAs in a timely manner.	No	

Table 1.B. Response to Comments on Proposed Changes in the Second Version of Proposed Reopener (for comments rec'd during the period of July 21 to September 4)

COMMENT NO.	SUMMARY OF COMMENT	COMMENTER(S)	RESPONSE	REVISION	LOCATION IN DOCUMENTS
1.B.1	<u>General</u> The deadline to make Santa Monica Bay beaches safe for swimming has passed. Support incorporating the TMDL into the LA County MS4 Permit	Governor Schwarzenegger	Implementing TMDLs to improve water quality and protect public health is one of the Regional Board's highest priorities. Regional Board staff agrees that incorporation of the Santa Monica Bay Beaches Bacteria TMDL provisions into the MS4 Permit at this time is critical given the millions of visitors to Santa Monica Bay beaches at this -- the height of the beach season. The Regional Board is obligated to protect	No	

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			<p>the health of the millions of citizens that visit Santa Monica Bay beaches each summer. A recent study estimated that an annual excess of 627,800 to 1,479,200 cases of gastrointestinal illness occur as a result of swimming at Los Angeles and Orange County beaches contaminated with <i>enterococci</i> bacteria. Using a conservative health cost of gastroenteritis, this corresponds to an annual economic loss of \$21 million or \$50 million (in year 2000 dollars) depending upon the underlying epidemiological model used. (Given, S. <i>et al.</i> 2006)</p> <p>The Regional Board staff considered several options to render the SMB Beaches Bacteria TMDL summer dry weather WLAs enforceable, and determined that the limited reopener of the LA County MS4 permit was the best option to enforce the WLAs in a timely manner.</p>		
1.B.2	The process of adoption lacked the opportunity for meaningful input resulting in significant deficiencies.	Redondo Beach	See response to 1.B.6 below.	No	
1.B.3	Object to the inclusion of numerical limits in an MS4 permit that is subject to the maximum extent practicable (MEP) standard	Redondo Beach	MS4 Permits are subject to both MEP and water quality standards. The reopener will implement a federally mandated and approved TMDL into a federal NPDES permit, consistent with all federal requirements.	No	
1.B.4	Express concern about	Bradbury, Carson,	Provisions in NPDES permits must	No	

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	including a Waste Load Allocation (WLA) in the MS4 Permit, and establishing a precedent	Glendora, Inglewood, La Cañada Flintridge,	reflect the assumptions and requirements of available TMDLs (40 CFR 122.44 (d) (1) (vii) (B)), and the NPDES permit must incorporate the WLAs.		
1.B.5	Incorporating TMDLs into general storm water permits will lead to unwieldy and large permits that will be difficult to understand	Executive Advisory Committee	See response to 1.B.4 above	No	
1.B.6	Partnership – The best approach to achieving water quality objectives is a partnership between the Regional Board and responsible jurisdictions and agencies under the TMDL. Proposed motion is counterproductive to such partnership. Lack of adequate consultation between the Regional Board and responsible agencies.	County of Los Angeles Department of Public Works; Redondo Beach	<p>The Regional Board and its staff are committed to working with stakeholders in a cooperative way. However, the Regional Board is obligated by federal regulation (40 CFR section 122.44(d)) to ensure that NPDES permits are consistent with the assumptions and requirements of any available waste load allocation. Failing to incorporate the waste load allocation into the permit would be contrary to the federal regulations.</p> <p>Over the past seven years, since 1999, the Regional Board has forged a partnership with responsible jurisdictions and agencies under the SMB Beaches Bacteria TMDLs. The Regional Board and its staff have consulted extensively with responsible jurisdictions and agencies both at a technical level and a policy level on the Santa Monica Bay Beaches Bacteria TMDL for Dry Weather, which the</p>	No	

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			<p>proposed permit modifications directly implement. As documented below, the Regional Board has fully met the requirements of Water Code section 13240 to consult with and consider the recommendations of local agencies in adopting the SMB Beaches Bacteria TMDL as an amendment to the Los Angeles Region Basin Plan.</p> <p>During 1999 and 2000, Regional Board staff convened a technical steering committee facilitated by SCCWRP to provide input throughout the development of the TMDL. Additionally the Regional Board staff met with the Santa Monica Bay Restoration Commission's (SMBRC's) Technical Advisory Committee three times during 1999 - 2000 to solicit early technical input on data needs and approaches to developing the TMDL. During 2001, the year preceding the adoption of the TMDL, Regional Board staff held a total of 11 meetings with responsible jurisdictions and agencies and other stakeholder groups to solicit input on the development of the TMDL. These meetings included regular dialogue with the technical steering committee as well as multiple policy-level meetings with the Executive Advisory Committee and the SMBRC's Bay Watershed Council and Technical Advisory Committee. Representatives from the County of Los</p>		

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			<p>Angeles Department of Public Works were members of each of these committees and attended 8 of these meetings.</p> <p>During these meetings and in the regulatory language of the TMDL, the Regional Board made clear that the TMDL provisions would be primarily implemented through the MS4 Permit. Additionally, all Permittees under the LA County MS4 Permit have been on notice since 2001 that the Regional Board anticipated incorporating TMDLs into the MS4 permit. The staff report/ fact sheet of the current Los Angeles County MS4 permit states:</p> <p>“TMDLs are one of the Regional Board's highest priorities. In view of the Region's highly urbanized environment, it is likely that pollutants in storm water will be allocated significant load reductions. While specific load reductions can't be forecast at this time, the Board does envision that storm water permits will be an important mechanism for implementing pollutant load reductions.” (p. 14.)</p> <p>Additionally, after adoption of the Dry Weather TMDL, responsible jurisdictions and agencies formed a Technical Steering Committee to develop the Coordinated Shoreline</p>		

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			<p>Monitoring Plan (CSMP) required by the TMDL. The Regional Board participated actively in the TSC over several months to provide guidance and support in the development of the CSMP.</p> <p>The above description of Regional Board efforts to consult with and consider the recommendations of responsible jurisdictions and agencies demonstrates the Regional Board's commitment to forging a partnership with these agencies in the development and implementation of the TMDL to the extent possible given its regulatory obligations.</p>		
1.B.7	Unnecessary - There is no demonstrated need to modify the permit at this time.	County of Los Angeles Department of Public Works	<p>Reopening the permit at this time is wholly appropriate given that compliance with the summer dry weather provisions of the TMDL is required by July 15, 2006. Awaiting the Permit's renewal would be inconsistent with these provisions.</p> <p>Furthermore, 40 CFR 122.44(d) requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. Failing to incorporate the waste load allocation into the permit would be contrary to the federal regulations.</p> <p>All Permittees under the LA County MS4 Permit have been on notice since</p>	No	

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			<p>2001 that Regional Board staff anticipated the incorporation of TMDLs into the MS4 permit:</p> <p>TMDLs are one of the Regional Board's highest priorities. In view of the Region's highly urbanized environment, it is likely that pollutants in storm water will be allocated significant load reductions. While specific load reductions can't be forecast at this time, the Board does envision that storm water permits will be an important mechanism for implementing pollutant load reductions. (p. 14.)</p> <p>The regulatory provisions of the TMDL also state that the primary mechanism for implementing the TMDL will be through the MS4 Permits (Basin Plan Table 7-4.1).</p> <p>From a public health standpoint, incorporation of the TMDL provisions into the MS4 Permit is important at this time given the millions of visitors to Santa Monica Bay beaches at this -- the height of the beach season. The Regional Board obligated to protect the health of the millions of citizens that visit Santa Monica Bay beaches each summer. A recent study estimated that an annual excess of 627,800 to 1,479,200 cases of gastrointestinal</p>		

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			illness occur as a result of swimming at Los Angeles and Orange County beaches contaminated with <i>enterococci</i> bacteria. Using a conservative health cost of gastroenteritis, this corresponds to an annual economic loss of \$21 million or \$50 million (in year 2000 dollars) depending upon the underlying epidemiological model used. (Given, S. <i>et al.</i> 2006)		
1.B.8	Inconsistency with Malibu Creek and Ballona TMDLs - The summer dry weather compliance date for Malibu Creek is not until January 2009 and the summer dry weather compliance date for Ballona Creek is not until six years after the effective date, which will be sometime after 2012.	County of Los Angeles Department of Public Works	The proposed permit modifications specifically address direct discharges from the MS4 to Santa Monica Bay. MS4 discharges into Ballona Creek and Malibu Creek are subject to the compliance schedules set forth in the Ballona Creek Bacteria TMDL and Malibu Creek Bacteria TMDL, respectively. The regulatory provisions of these TMDLs will be incorporated into the MS4 Permit at a later date.	No	
1.B.9	Iterative Approach - Proposed Part 2.5 should be made a proposed Part 2.3 and compliance should be achieved through the iterative process.	County of Los Angeles Department of Public Works	The US EPA's Wet Weather TMDL Policy and State Board WQO 99-05 discuss the use of an iterative approach to controlling pollutants in storm water discharges. For non storm water discharges from MS4s that cause or contribute to exceedances of a water quality standard, the appropriate response is to prohibit the discharges or require strict compliance with the water quality standards.	No	

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			<p>The Regional Board is not suggesting that the sole reason for not employing an iterative approach is that likely means of compliance (i.e. dry weather diversions) do not require an iterative approach. The Regional Board further understands that not all dry weather discharges may be addressed through diversions.</p> <p>The key reasons for not employing an iterative approach to implement the SMB Beaches Bacteria Summer Dry Weather WLAs are:</p> <p>(1) The WLAs do not regulate the discharge of storm water;</p> <p>(2) The harm to the public from violating the WLAs is dramatic both in terms of health impacts to exposed beachgoers, and the economic cost to the region associated with related illnesses;</p> <p>(3) Despite the fact that more than a decade and a half has passed since MS4 permittees were required to eliminate illicit connections / discharges (IC/ID) into their MS4s, few permittees have adopted an aggressive approach to eliminating IC/IDs, and their measured approach has not eliminated standards violations at the beaches; and</p>		

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			(4) Few permittees have ever documented revisions to their SQMP to address chronic exceedances of water quality standards.		
1.B.10	The County Incorporates by Reference its Prior Comment Letters	County of Los Angeles Department of Public Works	See Response to Comments dated August 4, 2006, for comments received before the July 13, 2006 Board Meeting date.	See Response to Comments, dated August 4, 2006	
1.B.11	No lawful basis for making one Permittee responsible for another Permittee's compliance	County of Los Angeles Department of Public Works	The provision is derived directly from the TMDL, which was not challenged. The permittees are jointly responsible because they are discharging to and from a joint system. There are several safe harbors articulated in the fact sheet that would obviate liability by a particular jurisdiction. Moreover, nothing would prevent a permittee within a relevant subwatershed from seeking indemnity from another permittee in the same manner as joint tortfeasors, to the extent the permittee has not actually caused the violation.	No	
1.B.12	The County is notifying the Regional Board that it is not waiving its right to an adjudicatory hearing in accordance with all applicable statutory and regulatory provisions. The County intends to exercise its right to	County of Los Angeles Department of Public Works	An order of proceedings was issued on September 8, 2006, describing the process that will be employed. Each party to this quasi adjudicative proceeding will be afforded adequate due process of law, and will have a fair opportunity to present their case. The County's comments to date have not justified the need for eight hours to present its case. The times set forth in	N/A	

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	opening and closing statements, presentation of evidence, and examination and cross-examination of witnesses. The County anticipates needing at least eight hours or more to present its case.		the Order of Proceedings are subject to modification for cause in the Chair's discretion.		
1.B.13	The evidence that the Regional Board staff intends to introduce at the hearing has not been identified. All documents and exhibits relied upon should be made available for inspection and copying prior to the hearing	County of Los Angeles Department of Public Works	The evidence, documents, and the exhibits have been identified and posted on the Water Board's website at, 1. Public Notices: http://www.waterboards.ca.gov/losangeles/html/meetings/public_notices.html 2. Storm Water - Los Angeles Municipal Permits: http://www.waterboards.ca.gov/losangeles/html/programs/stormwater/lams4.html 3. Current Board Meeting Items page: http://www.waterboards.ca.gov/losangeles/html/current_agenda_items.html and are available for copying	N/A	
1.B.14	The County requests that the Executive Officer and knowledgeable persons about the matter be present at the hearing to be called as witnesses by the County.	County of Los Angeles Department of Public Works	The following knowledgeable persons about this matter will be present at the hearing: Jonathan Bishop, Xavier Swamikannu, and Renee DeShazo.	N/A	

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1.B.15	<u>Receiving Water Limitation Language</u> The proposed language is ambiguous. Recommend inserting the word 'non storm water' in Part 1.B and Part 2.5.	County of Los Angeles Department of Public Works	The current wording in Part 1.B and Part 2.5, which refers to "summer dry weather" is consistent with the regulatory language of the TMDL. The term "summer dry weather" is clearly defined in the TMDL and in Part 5. Definitions of the Permit. It would be redundant to insert the word "non-stormwater".	No	
1.B.16	New Findings 33 and 34 unnecessarily limit Water Board authority to enforce the bacteria discharge prohibition. In addition, these Findings outline 3 conditions under which Permittees would not be responsible for violations	NRDC; Santa Monica Bay Keeper; Heal the Bay	These findings do not limit the Board's authority to enforce the bacteria discharge prohibition; it merely states Regional Board staffs' approach in investigating and properly identifying and following up, as appropriate, with responsible agencies. Findings 33 and 34 have been clarified to address the concerns regarding ineffective diversions of dry-weather flows and inadequate source investigations.	yes	Findings 33 and 34
1.B.17	Concur with revisions that now clarify that Permittees are not responsible for bacteria exceedances under certain enumerated conditions identified in Findings 32 and 33.	County of Los Angeles Department of Public Works	See Response to 1.B.16	yes	
1.B.18	The Proposed Findings Are Not Sufficient to Support the Proposed Amendment	County of Los Angeles Department of Public Works	The findings proposed by the commenter are not necessary to reopen a permit to implement a waste load allocation. 1. While a source analysis might be useful for an enforcement	No	

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			<p>order, no authority requires the source of bacteria to be identified before a WLA is incorporated into the permit. In any event, the source analysis occurred when the TMDL was adopted, and the TMDL is not now subject to collateral attack. 2. No evidence of technical infeasibility has been shown. The TMDL describes foreseeable means of compliance. 3. No authority supports the claim that public acceptance is a precondition to a permit condition. 4. Every appellate decision in California affirms the Water Boards' right to require measures beyond MEP, and no finding is required in that regard. Findings show that the targeted discharges are not storm flows in any event. 5. No evidence has been submitted showing that the permit conditions are not reasonably achievable. No authority supports the commenter's claim that such a finding is necessary. 6. and 7. Non-storm water flows are not subject to the MEP standard. No evidence has been submitted showing the conditions are not practicable. In any event, the permit conditions are fully compliant and within federal law requirements and therefore the Burbank decision does not apply.</p>		
1.B.19	The CSMP divided the monitoring sites into two divisions: sites that are influenced by MS4s,	Redondo Beach	It is not necessary to limit the reference in the Findings to "Point Zero" sites, since the language in the Order clearly indicates that what is being regulated	No	

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	identified as “Point Zero” sites and those that are not (“Open Beach” sites). Finding 32 should be revised to clarify that the RWLs under the Order only apply to Point Zero sites.		are MS4 discharges to Santa Monica Bay. The Regional Board in any investigative order would determine whether the site is impacted by a MS4 discharge. Enforcement orders would only be issued to permittees under the MS4 Permit if the Regional Board determined that the source of noncompliance was a MS4 discharge. If not, separate investigative orders, WDRs or enforcement orders may be issued to the other responsible jurisdiction(s) or agencies identified in Basin Plan Table 7-4.1 footnote 3.		
1.B.20	The proposed new language in Finding 33(b) unduly limits the methods for diverting dry weather flow to sanitary sewers. Other types of diversions could be just as effective. The language should more generally cover situations where the MS4 does not discharge dry weather flow to Santa Monica Bay.	Redondo Beach	Regional Board staff agrees with the commenter and has made the suggested change.	Yes	Finding 33(b)
1.B.21	The proposed language in Finding 33(c) should be more specific so that it is clear that the new language only applies to flows during summer dry weather.	Redondo Beach	Regional Board staff agrees with the commenter and has made the suggested change.	Yes	Finding 33(c)
1.B.22	The proposed language	Redondo Beach	Regional Board staff agrees with the	Yes	Part 1.B, Footnote 3

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	in Footnote 3, Part 1.B. would be more easily understood if the specific portions of Table 7-4.1 were included.		commenter and has made the suggested change.		
1.B.23	The term "wave wash" in Part 2.5 should be removed as the adjacent footnote links the word to the CSMP. This is misleading. The term should also be removed from Part V. Definitions.	Redondo Beach	Footnote 4 has been moved to the end of Part 2.5 to avoid directly linking the term "wave wash" to the CSMP. However, it is important to retain the term "wave wash", since the wave wash is the compliance point identified in the TMDL for "Point Zero" sites. The definition of "Wave Wash" in Part V. Definitions of the proposed language is the same as the definition provided in the TMDL.	Yes	Part 2.5, Footnote 4 moved to end of section
1.B.24	The proposed new definitions in Part V. for "Dry Weather" and "Rain Day" are confusing and do not exactly match the TMDL definition. Suggest adding definition of "Wet Weather" and defining dry weather as those days not defined as wet weather.	Redondo Beach	The definition of "Dry Weather" in Part 5. Definitions has been corrected.	Yes	Part 5. Definitions of Order language
1.B.25	Proposed Finding 32 is an important element of adding the SMB Beaches Bacteria TMDL into the NPDES permit. It should be integrated into the Permit Monitoring and Reporting Program.	Redondo Beach	It is Regional Board staff's intent to incorporate the CSMP into the Permit Monitoring and Reporting Program at the time of Permit renewal.	No	

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1.B.26	The introduction of the CSMP into the MS4 Permit could lead to confusion due to the existence of the "Shoreline Monitoring", Section II D portion of the existing permit. There should be a clear separation between these two programs to ensure that the data collected by the permit "Shoreline Monitoring" program is not misused.	Redondo Beach	The CSMP will eventually replace the existing "Shoreline Monitoring" Section II D portion of the existing permit. At present, the sites identified in the "Shoreline Monitoring" section are a subset of the compliance monitoring sites identified in the CSMP. The data from the two programs are nearly equivalent with the exception of sampling frequency and both are intended to be used to assess compliance with water quality standards at Santa Monica Bay beaches.	No	
1.B.27	The additional findings delineated in paragraphs E 33 and 34 should be integrated into the Order under Part 6. P. or at the end of Part 2	Redondo Beach	Regional Board staff continue to believe that this language needs to reside in the findings of the permit. This language clearly states Regional Board staffs' general approach in investigating and properly identifying and following up, as appropriate, with responsible agencies; however, including this language in the order may inappropriately restrict the authority and discretion of Board staff or the Regional Board in exercising future enforcement for specific circumstances yet to occur.	No	